

\*The Hon'ble Sri Justice V.V.S.RAO

+Writ Petition No.24541 of 2005

%24.11.2005

£ M. Srinivasa Rao and another

...Petitioners

Vs.

\$ Forest Section Officer, Nellipaka Section

Bandiravi, Bhadrachalam Range,Khammam District

... Respondent

!For the petitioner ...Mr.C.Raghu

^For the Respondents ...A.G.P. for Forests

<Gist:

>Head Notes:

? Cases Referred

1. AIR 2000 SC 2729
2. 2004 AIR SCW 5
3. AIR 2004 SC 1851

4. 1998 (2) ALT (Cri.) 586 (AP)

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.24541 OF 2005

DATED:24.11.2005

Between:

M. Srinivasa Rao and another

...Petitioners

And

Forest Section Officer, Nellipaka Section

Bandiravi, Bhadrachalam Range,Khammam District

...Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.24541 OF 2005

ORDER:

The first petitioner is owner of Tata Indica Car bearing No.AP 16AL 3490 and the second petitioner is owner of another car bearing No.AP 09Y 1317. On 28.9.2005 when they were proceeding to Chittoor, the respondent seized their cars and also cell phones, arrested them and produced them before the Court of Judicial Magistrate of First Class, Kothagudem, in connection with forest offence O.R.No.37/05-06, dt.28.9.2005. It is the case of the petitioners that on the same day the respondents seized a van bearing No.AP 20W 2057 with teak timber on allegation that the petitioners were following the van loaded with teak timber with two separate cars, they were seized. The petitioners contend that they were not transporting any timber or forest produce illegally and that they were in the cars behind the van with which they are not concerned and therefore the seizure of the cars is illegal and contrary to the provisions of Section 44 of the A.P. Forest Act, 1967 (for short, the Act), and A.P.Forest Produce Transit Rules, 1970 (for short, the Rules).

The case was initially listed before this Court on 17.11.2005. Learned Assistant Government Pleader for Forests vehemently opposed the Writ Petition. He was directed to produce relevant file and also get instructions in the matter. The file is produced today for perusal of the Court.

Learned counsel for the petitioners, Sri C.Raghu, vehemently contends that under Section 44(1) read with Section 44(2-C) of the Act, unless and until a vehicle is used in commission of forest offence, the same cannot be seized and that if the owner proves to the satisfaction of the authorities that the vehicle was used in carrying of forest product illegally without the knowledge of the owner, the same cannot be confiscated. He also submits that the vehicles of the petitioners are seized allegedly for commission of offence under Section 29 of the Act read with Rules 3 and 4 of the Rules. When the petitioners were found in the cars behind the van with which the petitioners have no concern, and the petitioners were not transporting any timber or forest produce in the cars, no such offence is made out and therefore the power to

confiscate the cars under Section 44(1) of the Act cannot be used to seize the cars.

Learned Assistant Government Pleader for Forest Department, Sri Gopal, produced the relevant file containing the statements given by both the petitioners before the Forest Range Officer on 28.9.2005 and other documents. He also submits that after receiving the report of the respondent, Forest Section Officer, Authorized Officer has issued enquiry notice dt.17.11.2005 calling upon the petitioners and the owner of the van to show cause as to why the teak logs together with the vehicles should not be confiscated to the Government as per law. Without submitting any explanation, the petitioners have filed present Writ Petition. He also disputes various contentions raised by the learned counsel for the petitioners. Further, placing reliance on the decisions of the Supreme Court in **State of Karnataka v. K. Krishnan, Section Forester v. Mansur Ali Khan**, and **State of West Bengal v. Sujit Kumar Rana** learned Assistant Government Pleader submits that in exercise of powers under Article 226 of the Constitution of India, the vehicles seized in connection with a forest offence cannot be released and the aggrieved party has to approach the Authorized Officer for such relief.

Two questions would arise for consideration. These are dealt with in seriatim. The first question is regarding the power of the Authorized Officer to seize the vehicles of the petitioners. To appreciate the contention of the learned counsel for the petitioners, Sections 44(1), 44(2-A), 44(2-C) of the Act may be referred to. These read as under.

**44. Seizure of property liable to confiscation and procedure thereupon:-**

(1). Where there is reason to believe that a forest offence has been committed in respect of any timber or forest produce, such timber, or forest produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing any such offence may be seized by any forest officer or police officer.

(2). ... ..

(2-A). Where an authorized officer seizes under sub-section (1) any timber or forest produce or where any such timber or forest produce is produced before him under sub-section (2) and he is satisfied that a forest offence has been committed, in respect thereof, he may order confiscation of the timber or forest produce so seized or produced together with all tools, ropes, chains, boats or vehicles used in committing such offence.

(2-B). ... ..

(2-C). Without prejudice to the provisions of sub-section (2-B), no order of confiscation under sub-section (2-A) of any tool, rope, chain, boat or vehicle shall be made if the owner thereof proves to the satisfaction of the authorized officer that it was used in carrying the property without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the tool, rope, chain, boat or vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

The provision deals with seizure of property liable to confiscation and procedure thereof. Sub-section (1) empowers the seizure of the timber or forest produce together with the vehicles used in committing any such offence. Sub-section (2-A) enables the Forest Officer to confiscate the seized vehicles used in committing such offence. Sub-section (2-C) is an exception only to sub-section (2-A) and not sub-section (1). To elucidate further, insofar as the seizure of the vehicles used in the commission of forest offence is concerned, all the vehicles used in commission of forest offence can be seized under Section 44(1) of the Act. At that stage, the question whether the vehicle seized was used in carrying the forest produce with or without the knowledge of the owner, is irrelevant. In the next stage, the Forest Officer has to issue notice as required under Section 44(2-B)(a) and afford an opportunity of making representation, and if he satisfies that a forest offence has been committed, order confiscation of timber or forest produce so seized together with all tools, ropes, chains, boats or vehicles used in committing the forest offence. Here again, insofar as the confiscation of vehicles is concerned, Section 44(2-C) adumbrates an exception. A owner of the vehicle is given an opportunity to prove before the Authorized Officer that the vehicle/vehicles seized under Section 44(1) in connection with commission of offence was used in carrying the property without the knowledge or connivance of the owner or his agent. However, insofar as the confiscation of timber or forest produce is concerned, the owner cannot claim any such indulgence by the Forest Officer. The submission of the learned counsel for the petitioners that sub-section (2-C) of Section 44 of the Act cannot be ignored while seizing the vehicles under Section 44(1) or confiscating the vehicles under Section 44(2-A) of the Act cannot be accepted. One cannot ignore that the Legislation has used the words and phrases "... the vehicles and cattle, together with all tools, ropes, chains, boats used in committing any such offence..." in both sub-sections (1) and (2-A) of the Act. This only shows that the intention of the Legislature is to seize and confiscate all vehicles used in committing forest offence irrespective of the fact that whether such vehicle was carrying forest produce or not.

The submission of the learned counsel for the petitioners that if the vehicle at the time of seizure is not found carrying forest produce, the vehicle cannot be seized, is misconceived. Reading Section 44(1) and Section 44(2-A), it is not possible to accept such interpretation. If such interpretation is accepted, the Legislative endeavour to authorize the seizure and confiscation of tools, ropes, chains, boats and vehicles would be meaningless and absurd. The important ingredient in these two sub-sections is whether or not the vehicle is used in committing forest offence, and whether or not such vehicle is used for carrying forest produce and it arises only when such defense is taken by the owner for the purpose of Section 44(2-C) of the Act.

In **M.Sadhiqunnisa Begum v. Divisional Forest Officer**, this Court considered the question whether a vehicle could be seized and confiscated under Section 44 of the Act if it is found to be used in carrying the property and if such vehicle is used in committing any forest offence or abetment thereof. After referring to the provisions relevant for the purpose, this Court held as under.

Therefore, Section 44 is required to be construed by keeping the scheme of the Act in mind. Viewed in that background the words in sub-section (1) of Section 44 'reason to believe that a forest offence has been committed' is required to be read including 'abetment of forest offence has been committed.' Sub-section (2-A) of Section 44 where the expression 'forest offence has been committed' is found, is also required to be read in the same manner. If the provisions are read such, the words used in sub-section (2-C) 'carrying the property's is required to be read along with the words 'in committing the offence' and 'committing the offence' is required to be read as 'committing the offence, including its abetment.' Thus read, every vehicle used in the commission of offence or the abetment of offence is liable to be seized and confiscated, whether such vehicle actually 'carried the property' or not.....It is thus not possible to agree with the submission made by the learned Counsel for the petitioners that no vehicle can be seized or confiscated unless such vehicle is found to be actually "carrying the property". On the other hand, S. 44 is required to be interpreted that every vehicle used either in committing the forest offence or used in the abetment of commission of the offence is liable for seizure and confiscation. Such vehicle need not be found carrying the property.

The above interpretation also supports the view taken in this case. Whenever any vehicle is used for commission of offence, that is to say, for removing forest produce, carrying forest produce, or for carrying the persons to remove the forest produce, such vehicle is liable for seizure and confiscation under the provisions of the Act. Indeed, if the offenders used any vehicle to reach forest or used any vehicle to cut trees in the forest, such vehicles can also be seized and confiscated. It is only at the time of confiscation, a owner can plead that he has no knowledge to extract himself from the rigor of Section 44 (2-A) of the Act.

The petitioners approached this Court challenging the seizure even without submitting explanation to the notice of enquiry issued under Section 44 (2-B) of the Act. In such a case the jurisdiction under Article 226 of the Constitution of India cannot be pressed into service, to order release of the vehicle involved in the commission of forest offence. This is well settled by reason of the decisions of the Supreme Court in **State of Karnataka v. K. Krishnan** (supra), **Section Forester v. Mansur Ali Khan** (supra), and **State of West Bengal v. Sujit Kumar Rana** (supra).

In **State of Karnataka v. K. Krishnan** (supra), which was followed in the latter two judgments, the Supreme Court laid down as under.

Before passing an order for releasing the forest produce or the property used in the commission of the forest offence, the Authorised Officer or the Appellate Authority has to specify the reasons which justify such release, apparently, prima facie excluding the possibility of such forest produce or the property being confiscated ultimately. Generally, therefore, **any forest produce and the tools, boats, vehicles, cattles, etc., used in the commission of the forest offence, which are liable to forfeiture, should not be released.** This, however, does not debar the officers and the authorities under the Act including the Appellate Authority to pass appropriate

orders under the circumstances of each case but only after assigning valid reasons. The liberal approach in the matter would perpetuate the commission of more offences with respect to the forest and its produce which, if not protected, is surely to affect the mother-earth and the atmosphere surrounding it. The Courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The forests are not only the natural wealth of the country but also protector of human life by providing a clean and unpolluted atmosphere. **We are of the considered view that when any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence, including confiscatory proceedings, if any.** Nonetheless, if for any exceptional reasons a Court is inclined to release the vehicle during such pendency, furnishing a bank guarantee should be the minimum condition. No party shall be under the impression that release of vehicle would be possible on easier terms, when such vehicle is alleged to have been involved in commission of a forest offence. Any such easy release would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come.

(emphasis supplied)

Therefore, this Writ Petition is devoid of any merit. If so advised, it shall be open to the petitioners to submit their explanation before the Authorized Officer immediately, whereupon the latter shall consider the explanation and pass appropriate orders in accordance with law.

The Writ Petition with the above observations is accordingly dismissed.

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24.11.2005 (V.V.S.RAO, J)

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